



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS–R6–ES–2012–0053; Docket No. FWS–R6–ES–2013–0020]**

**[4500030114]**

**RIN 1018–AY11; RIN 1018–AZ39**

### **Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Coral Pink Sand Dunes Tiger Beetle and Designation of Critical Habitat**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our October 2, 2012, proposed listing decision and proposed designation of critical habitat for Coral Pink Sand Dunes tiger beetle under the

Endangered Species Act of 1973, as amended. We announce the availability of a draft economic analysis (DEA), a draft environmental assessment (EA), an amendment to the 2009 Conservation Agreement and Strategy for the Coral Pink Sand Dunes tiger beetle, and an amended required determinations section of the proposal. We also announce the availability of 2012 Coral Pink Sand Dunes tiger beetle survey results that were not available when the proposed rule was being written. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the Draft EA, the Conservation Agreement amendment, and the amended required determinations section. We also announce a public hearing to be held in Kanab, Utah.

**DATES:** *Written Comments:* We will consider all comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public Information Meeting:* We will hold a public information meeting in Kanab, Utah, on May 22, 2013, from 4 p.m. to 6 p.m. (see **ADDRESSES** section, below).

*Public Hearing:* We will hold a public hearing in Kanab, Utah, on May 22, 2013, from 7 p.m. to 9 p.m. (see **ADDRESSES** section, below).

**ADDRESSES:** *Document Availability:* You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2012–0053 or by contacting the U.S. Fish and Wildlife Service, Utah Field Office, Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT**). You may obtain a copy of the draft economic analysis (DEA), the draft environmental assessment (Draft EA), the 2009 Conservation Agreement and Strategy for the Coral Pink Sand Dunes tiger beetle (Conservation Agreement) amendment, and the 2012 Coral Pink Sand Dunes tiger beetle survey results at [http:// www.regulations.gov](http://www.regulations.gov) at Docket Number FWS–R6–ES–2013–0020, or by contacting the U.S. Fish and Wildlife Service, Utah Field Office, Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT**).

*Written Comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS–R6–ES–2012–0053, and submit comments on the critical habitat proposal and associated DEA and Draft EA to Docket No. FWS–R6–ES–2013–0020. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comments on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0053; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal, DEA, and Draft EA by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2013–0020; Division of Policy and Directives

Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

(3) *Public Information Meeting and Public Hearing*: Both the public information meeting and the public hearing will be held at the Kanab City Library, 374 North Main, Kanab, Utah 84741.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office, Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119; telephone 801–975–3330; or facsimile 801–975–3331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Public Comments**

We will accept written comments and information during this reopened comment period on: (1) Our proposed listing as threatened and proposed critical habitat designation for Coral Pink Sand Dunes tiger beetle that was published in the **Federal Register** on

October 2, 2012 (77 FR 60208); (2) our DEA of the proposed designation; (3) our Draft EA; (4) the Conservation Agreement amendment; (5) 2012 Coral Pink Sand Dunes tiger beetle surveys and how this information should be considered in the designation of critical habitat; and (6) our amendment of required determinations. We will consider information and recommendations from all interested parties. We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the Coral Pink Sand Dunes tiger beetle. The final listing rule will publish under the existing Docket No. FWS–R6–ES–2012–0053, and the final critical habitat designation will publish under Docket No. FWS–R6–ES–2013–0020.

We request that you provide comments specifically on our listing determination under Docket No. FWS–R6–ES–2012–0053.

We request that you provide comments specifically on the critical habitat determination and related DEA and Draft EA under Docket No. FWS–R6–ES–2013–0020. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent;

(2) Specific information on:

- (a) The amount and distribution of Coral Pink Sand Dunes tiger beetle habitat;
  - (b) What areas that are occupied and that contain features essential to the conservation of this species should be included in the designation and why;
  - (c) Special management considerations or protection that may be needed in the critical habitat area we are proposing, including managing for the potential effects of climate change;
  - (d) What areas not occupied at the time of listing are essential for the conservation of these species and why; and
  - (e) Means to quantify the amount of natural and human-caused disturbance this species prefers or can tolerate.
- (3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed critical habitat.
- (4) Information on the projected and reasonably likely impacts of climate change on the Coral Pink Sand Dunes tiger beetle and proposed critical habitat.
- (5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.
- (6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

(9) Whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that will likely occur if we designate critical habitat.

(10) Whether the DEA correctly assesses the effect of regional costs associated with land use controls that may result from the designation of critical habitat.

(11) Whether the DEA identifies all Federal, State, and local costs and benefits attributable to the proposed designation of critical habitat, and information on any costs that have been inadvertently overlooked.

(12) Whether the Draft EA adequately presents the purpose of and need for the proposed action, the proposed action and alternatives, and the evaluation of the direct, indirect, and cumulative effects of the alternatives.

(13) Whether the amended Conservation Agreement for the Coral Pink Sand Dunes tiger beetle provides sufficient conservation measures to reduce threats to the species.

You may submit your comments and materials concerning our proposed rule or the associated DEA and draft EA by one of the methods listed in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, DEA, and Draft EA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R6–ES–2012–0053 and Docket No. FWS–R6–ES–2013–0020, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Utah Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed critical habitat, the DEA, the Conservation Agreement amendment, and the Draft EA on the Internet at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2012–0053 and Docket No. FWS–R6–ES–2013–0020, or at <http://www.fws.gov/mountain-prairie/species/invertebrates/CoralPinkSandDunesTigerBeetle/index.html>, or by mail from the Utah Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

## **Background**

### *Previous Federal Actions*



It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for the Coral Pink Sand Dunes tiger beetle and our consideration of the Conservation Agreement amendment relative to the proposed listing rule. For more information on previous Federal actions and the biology of the Coral Pink Sand Dunes tiger beetle, refer to the proposed listing rule and proposed designation of critical habitat published in the **Federal Register** on October 2, 2012 (77 FR 60208), which is available online at <http://www.regulations.gov> (at Docket No. FWS–R6–ES–2012–0053 or Docket No. FWS–R6–ES–2013–0020).

In total, we proposed approximately 921 hectares (ha) (2,276 acres (ac)) in Kane County, Utah, for designation as critical habitat in our October 2, 2012, proposed rule. However, the 2012 Coral Pink Sand Dunes tiger beetle surveys found beetle adults and larvae in habitat adjacent to the proposed critical habitat area (Knisley and Gowan 2013, pp. 12–13). Therefore, based on the availability of this new information, we request that the public review this data and provide input on how it might be considered for the designation of critical habitat (see **2012 Survey Information, below**).

The original proposal had a 60-day public comment period, ending November 16, 2012. We will publish in the **Federal Register** a final listing decision and final critical habitat designation for the Coral Pink Sand Dunes tiger beetle on or before the statutory deadline of October 2, 2013.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Our October 2, 2012, proposed rule evaluated the 2009 Conservation Agreement for the Coral Pink Sand Dunes tiger beetle. The 2009 Conservation Agreement resulted in the establishment of two Conservation Areas that protect the Coral Pink Sand Dunes tiger beetle from off-road vehicle use. Based on new survey information, we have worked with the State of Utah and Bureau of Land Management to amend the 2009 Conservation Agreement and expand the protected habitats for the species (see **Conservation Agreement Amendment**, below). We are seeking public comment on this amendment, including whether it provides sufficient conservation measures to reduce threats to the species to the point it does not meet the definition of threatened or endangered under the Act.

#### **Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that the area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from the designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

In the case of the Coral Pink Sand Dunes tiger beetle, the benefits of critical habitat designation include public awareness of the presence of these species and the importance of habitat protection, and, where a Federal action exists, increased habitat protection for these species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal action occur primarily on Federal lands or for projects implemented, funded, or permitted by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the economic effects of the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

### **Draft Economic Analysis**

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Coral Pink Sand Dunes tiger beetle. The DEA also describes the economic impacts of all potential conservation efforts for the Coral Pink Sand Dunes tiger beetle. Some of these costs will likely be incurred regardless of whether or not we designate critical habitat.

The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). Therefore, the baseline represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks at baseline impacts incurred as a result of the species listing, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation.

In light of the 10th Circuit U.S. Court of Appeals ruling in *New Mexico Cattle Growers Association v. United States Fish and Wildlife Service*, the DEA also considers the coextensive cost impacts of the critical habitat’s protection. Coextensive impacts include the baseline impacts, which are a result of the listing, and incremental impacts, which are solely attributable to the designation of critical habitat.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Coral Pink Sand Dunes tiger beetle over the next 20 years, which was determined to be the appropriate period for analysis because planning information was available for most activities to reasonably forecast activity levels for projects for a 20-year timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are the costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of conservation efforts for the Coral Pink Sand Dunes tiger beetle associated with the following categories of activity: (1) Bureau of Land Management Kanab Field Office Resource Management Plan administration; (2) off-road vehicle (ORV) related consumer surplus losses (i.e., economic measure of consumer satisfaction—ORV restrictions might result in some consumers feeling like they were not receiving sufficient recreational enjoyment for the expenses of traveling to and staying in the area); (3) consultation on a Coral Pink Sand Dunes State Park incidental take permit; (4) other management activities; and (5) conservation activities.

The proposed critical habitat designation for the Coral Pink Sand Dunes tiger beetle will result in minimal incremental costs because the proposed critical habitat is occupied by the species or likely used as a dispersal corridor between occupied habitats and we would expect costs beyond those attributable to the species listing (baseline costs) to be minimal (see discussion below). Furthermore, the baseline protections afforded by existing conservation activities partially address ORV use, which is one of the primary

threats to the species and its habitat (77 FR 60208). Table 1 summarizes the coextensive economic impacts of the proposed listing and critical habitat.

Coextensive impacts to economic activities are anticipated to be associated primarily with the administrative costs of Section 7 consultations, development of incidental take permits, and consumer surplus losses from anticipated ORV restrictions in the Coral Pink Sand Dunes State Park. The cost of these impacts is estimated to be approximately \$225,298 over the next 20 years, at an annualized cost of \$13,416. Costs associated with conservation activities that are indirectly attributable to the listing are projected to be \$538,441 (Table 1). In addition, ORV visitors to BLM land adjacent to the State Park would potentially lose consumer surplus, but these costs are unquantified because of a lack of reliable visitation data. Additional information can be found in the DEA, which is available at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2013–0020 and at <http://www.fws.gov/mountain-prairie/species/invertebrates/CoralPinkSandDunesTigerBeetle/index.html>.

Table 1. Summary of coextensive impacts to economic activities over the next 20 years (including a 7 percent discount rate) pertaining to critical habitat designation for the Coral Pink Sand Dunes tiger beetle.

	Economic Activities					Total Coextensive
	Reinitiation of BLM RMP	OHV- Related Consumer Surplus Losses	State Park Incidental Take Permit	Other Management Activities	Conservation Activities	
Undiscounted	\$29,655	\$275,698	\$2,263	\$73,000	\$950,000	\$1,330,616
Net Present Vaule @ 7%	\$25,400	\$156,260	\$2,263 <sup>a</sup>	\$41,375	\$538,441	\$763,738
Average Annual Discounted Cost	\$1,270	\$7,813	\$2,263 <sup>a</sup>	\$2,069	\$26,922	\$40,337

<sup>a</sup> Undiscounted because the action is expected to take place in 2013.

Incremental costs associated with the designation of critical habitat are expected to be minimal. Designation of critical habitat for the Coral Pink Sand Dunes tiger beetle is not likely to result in additional consultations since the proposed designated critical habitat unit is occupied. Therefore, actions that would affect critical habitat would also affect the species present in the occupied Unit of critical habitat. However, the designation of critical habitat would result in direct incremental administrative costs to address adverse modification analyses, although these would be minimal. With no critical habitat designated outside the Coral Pink Sand Dunes habitat range, all indirect conservation costs or benefits are considered part of the baseline. No additional project modifications are expected relative to the baseline. Costs associated with reinitiating consultations will also be considered part of the baseline.



We are seeking data and comments from the public on the DEA. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

### **Draft Environmental Assessment; National Environmental Policy Act**

When the range of a species includes States within the U.S. Tenth Circuit Court of Appeals, pursuant to the ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will complete an analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) on critical habitat designations. The range of Coral Pink Sand Dunes tiger beetle is entirely within the State of Utah, which is within the Tenth Circuit.

The Draft EA presents the purpose of and need for critical habitat designation, the proposed action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500 through 1518) and according to the Department of the Interior's NEPA procedures.

The Draft EA will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment. We are seeking data and comments from the public on the draft EA, which is available at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2013–0020 and at <http://www.fws.gov/mountain-prairie/species/invertebrates/CoralPinkSandDunesTigerBeetle/index.html>.

## **2012 Survey Information**

A survey for Coral Pink Sand Dunes tiger beetle was conducted south of Conservation Area A in 2012, and we request that the public review this data and provide input on how it is considered for the designation of critical habitat (Knisley and Gowan 2013, entire). Researchers found a total of 16 adults and 13 larvae singly or in small numbers throughout the area directly south of Conservation Area A (Knisley and Gowan 2013, pp. 12–13). Large numbers of adult tiger beetles were also found in this area in earlier years (1998–2000) (Knisley and Gowan 2013, pp. 12–13), but this area was not included in our October 2, 2012, proposed critical habitat designation because beetles were generally not observed there for a decade. As described in our October 2, 2012,

proposed rule, the area supports the following primary constituent elements: (1) Elevations from 5,610 to 6,857 feet (1,710 to 2,090 meters); (2) appropriate levels of moisture and compaction to allow for burrowing (greater than 3 percent); and (3) vegetative cover of 23–57 percent that allows for ovipositing, adult thermoregulation, and abundant prey (77 FR 60208). Portions of this area are also included in the Conservation Agreement amendment (see **Conservation Agreement Amendment**, below). We seek comments from the public on the survey results, which are available at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2013–0020 and at <http://www.fws.gov/mountain-prairie/species/invertebrates/CoralPinkSandDunesTigerBeetle/index.html>.

### **Conservation Agreement Amendment**

Initially formalized in 1997 (Conservation Committee 1997, entire), and revised in 2009 (Conservation Committee 2009, entire), the Conservation Agreement for the Coral Pink Sand Dunes Tiger Beetle is a partnership for the development and implementation of conservation measures to protect the tiger beetle and its habitat. The purpose of the partnership is to ensure the long-term persistence of the Coral Pink Sand Dunes tiger beetle within its historical range and provide a framework for future conservation efforts. The Utah Department of Natural Resources, Division of Parks and Recreation, Bureau of Land Management (BLM), U.S. Fish and Wildlife Service, and Kane County, Utah, are signatories to these agreements and comprise the conservation

committee. The conservation committee has implemented conservation actions to benefit the Coral Pink Sand Dunes tiger beetle and its habitat, monitored their effectiveness, and adapted strategies as new information became available. Coordination under the Conservation Agreement resulted in the establishment of two Conservation Areas that protect the Coral Pink Sand Dunes tiger beetle from ORV use—Conservation Areas A and B (see our proposed rule (77 FR 60208, October 2, 2012) for more information on these Conservation Areas).

On March 21, 2013, signatories to the Conservation Agreement signed an amendment (Amendment to the 2009 Conservation Agreement and Strategy for the Coral Pink Sand Dunes Tiger Beetle (*Cicindela albissima*)) (Conservation Committee 2013, entire) to the 2009 Conservation Agreement that outlines several new conservation actions that will be enacted to address the threats that were identified in the October 2, 2012, proposed rule (77 FR 60208). The amendment evaluates the most recent tiger beetle survey information (Knisley and Gowan 2013, entire; see **2012 Survey Information**, above) and concludes that modifications to the boundaries of the Conservation Areas are needed to ensure continued protection of the tiger beetle from ongoing threats (see below description of threats). The amendment enlarges Conservation Area A by 29 percent from 84 to 108 ha (207 to 266 ac). The expansion of Conservation Area A protects 88 percent of the species' population from ORV use. In addition, the amendment provides protection for islands of habitat between Conservation Areas A and B (an additional 106 ha (263 ac)), with the intent of providing dispersal habitat for the species.

Overall, the Conservation Agreement amendment addresses the following threats to the Coral Pink Sand Dunes tiger beetle: (1) Habitat loss and degradation caused by off-road vehicle use; (2) small population effects, such as vulnerability to random chance events; (3) the effects of climate change and drought; and (4) cumulative interaction of individual factors such as off-road vehicle use, climate change, and drought (77 FR 60208, October 2, 2012) (Table 3). Additional information can be found in the Conservation Agreement amendment, which can be obtained as specified at the beginning of this document (see **ADDRESSES:** *Document Availability*).

Table 2. Threats to the Coral Pink Sand Dunes tiger beetle as identified in the October 2, 2012, proposed listing decision and proposed designation of critical habitat, and planned actions to address those threats through the Conservation Agreement and Strategy amendment.

Threat	Planned Action
Habitat loss/degradation and mortality associated with ORV use	<ul style="list-style-type: none"> <li>• Utah Department of Natural Resources, Division of Parks and Recreation agrees to expand the boundary of Conservation Area A to protect additional habitat while addressing diversity in recreation and maintaining safety standards for dune visitors. This area will be expanded in the 2013 field season from 84 to 108 ha (207 to 266 ac), thus increasing protection of tiger beetle occupied swales from 48 percent to 88 percent. All new or expanded habitat areas will be demarcated with carsonite marking posts to facilitate compliance by Park visitors.</li> <li>• Utah Department of Natural Resources, Division of Parks and Recreation and the BLM will protect vegetated habitat islands of connectivity between the southern and northern conservation areas and monitor to ensure compliance. This action will occur in 2013 and will protect 106 ha (263 ac) of additional sand dune habitat comprising 14 individual habitat patches, which range in size from 1 to 15 ha (2.6 to 37 ac). All new or expanded habitat areas will be demarcated with carsonite marking posts to facilitate compliance by Park visitors.</li> <li>• Tiger beetle adults and larvae were found to the south of Conservation Area A in 2012. The conservation committee will visit this area in spring of 2013 to determine any additional habitats that should be protected to support the tiger beetle. The</li> </ul>

	<p>size and configuration of any protected areas will be determined during the 2013 field season with input from all members of the conservation committee. All new or expanded habitat areas will be demarcated with carsonite posts to facilitate compliance by Park visitors.</p> <ul style="list-style-type: none"> <li>• The conservation committee will analyze available historic aerial imagery and other data to better understand dune movement and associated vegetation changes as they relate to beetle occupation and suitable habitat over time. Knowledge of dune movement patterns will be used in adaptive management planning to accommodate dune changes and the need to alter conservation area boundaries.</li> <li>• The conservation committee will conduct experimental vegetation treatments within existing conservation areas to determine if this activity could be an effective mechanism to increase suitable habitat.</li> <li>• The conservation committee will revisit conservation area boundaries on a routine cycle (every 3 years) and make necessary adjustments as a result of shifting dunes, vegetation changes, population increases and decreases, and resulting changes to suitable habitat.</li> <li>• Utah Department of Natural Resources, Division of Parks and Recreation and the BLM will continue efforts in law enforcement, education, and outreach.</li> </ul>
Vulnerability to stochastic events due to small population size	<ul style="list-style-type: none"> <li>• We are not aware of any additional populations of Coral Pink Sand Dunes tiger beetles outside of the Coral Pink Sand Dunes geologic feature. However, the conservation committee believes it is appropriate to continue surveys for the species and suitable habitat in the area. The conservation committee will identify potential habitat within an 80-km (50-mi) radius of the Coral Pink Sand Dunes using aerial imagery, and survey for tiger beetle presence and habitat suitability. If appropriate habitat is found, the area will be considered for experimental introduction.</li> <li>• The conservation committee will increase research efforts in experimental translocations in Conservation Area B and evaluate new habitat islands for appropriateness for reintroduction efforts.</li> <li>• The conservation committee will introduce individuals into suitable habitats (potential sites have been identified), monitor these sites, and revise translocation activities via an adaptive management process.</li> </ul>
Inadequacy of existing regulatory mechanisms	<ul style="list-style-type: none"> <li>• The Utah Department of Natural Resources, Division of Parks and Recreation and the BLM have done a creditable job of enforcing the protection boundaries of Conservation Areas A and B for approximately the last 15 years. This amendment increases the size of Conservation Area A by 24 ha (59 ac), and the conservation committee will consider further protection of habitats to the south</li> </ul>

	<p>of Conservation Area A (see Habitat loss/degradation and mortality associated with ORV use, above). In addition, the amendment establishes 14 habitat patches to support dispersal of tiger beetles between Conservation Areas A and B, increasing the total protected area by an additional 106 ha (263 ac). Because these signatory agencies have complied with the Conservation Agreement and Strategy for the last 15 years, we can reasonably conclude that the BLM and Utah Department of Natural Resources, Division of Parks and Recreation will continue to properly enforce the boundaries of all protected areas.</p>
Climate change and drought	<ul style="list-style-type: none"> <li>• The BLM is installing a weather station onsite in spring 2013 to better correlate weather patterns with beetle abundance. Understanding the effects of weather patterns on Coral Pink Sand Dunes tiger beetle populations may help us develop adaptive management strategies by identifying important habitat use areas during particularly warm or dry years.</li> <li>• The establishment of 14 additional habitat patches totaling 106 ha (263 ac) will occur at higher elevations in the sand dune area, and at locations that provide significant vegetated habitat. This effort has the potential to offset the drying and warming effects of climate change and drought on Coral Pink Sand Dunes tiger beetle habitat. In addition these habitat patches will provide dispersal habitat and connectivity between Conservation Areas A and B, which will better allow the tiger beetle to disperse to potentially cooler and wetter habitat that occurs in Conservation Area B.</li> </ul>
Cumulative effects of the above	<ul style="list-style-type: none"> <li>• Addressing the threats listed above independently will prevent these threats from acting cumulatively.</li> </ul>

### **Required Determinations—Amended**

In our October 2, 2012, proposed rule (77 FR 60208), we indicated that we would defer our determination of compliance with several statutes and Executive Orders (EOs) until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making these determinations. In this document, we affirm the information in our proposed rule concerning E.O. 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice

Reform), the Paperwork Reduction Act, E.O. 12866 and E.O. 12988 (Clarity of the Rule), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental



jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under the rule, as well as the types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

A significant economic impact threshold is generally a 3 percent impact as measured by appropriate quantitative metrics, such as annualized cost of compliance as a percentage of sales, government revenue, or annual operating expenditures. In general, if more than 20 percent of the affected small entities experience a significant economic impact, then there is considered to be a significant impact on a substantial number of small entities, and a regulatory flexibility analysis must be prepared.

For there to be a significant impact on a substantial number of small entities associated with designating critical habitat, then the incremental direct compliance costs must exceed the 3 percent threshold for more than 20 percent of the affected small

entities. Since the Service, BLM, and Coral Pink Sand Dunes State Park are the only entities with expected direct compliance costs and are not considered small entities, this rule will not result in a significant impact on a substantial number of small entities.

However, small entities, such as Kane County, ORV tour and rental businesses, and other local tourism-related businesses, may be indirectly affected as a result of the proposed listing and critical habitat designation. Because motorized visitors to the dunes may be further restricted access in the dune area than under the current boundaries, ORV use and rentals may be displaced or reduced, impacting the ORV rental entities and any businesses the visitors might frequent as part of their overall trip.

#### *Executive Order 13211—Energy Supply, Distribution, and Use*

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget's guidance for implementing this Executive order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. Critical habitat designation for Coral Pink Sand Dunes tiger beetle is not anticipated to affect energy supply, distribution, and use. Therefore, designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in oil and natural gas production or distribution), and a Statement of Energy Effects is not required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments,” with two exceptions. First, it excludes “a condition of federal assistance.” Second, it excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate”

includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for Coral Pink Sand Dunes tiger beetle, we do not believe that the rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts may occur due to project modifications and administrative costs of consultation

that may need to be made for grazing, maintenance, and recreational activities; however, these are not expected to affect small governments to the extent described above.

Consequently, we do not believe that the proposed critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

### **References Cited**

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at <http://www.regulations.gov> or by contacting the Utah Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

### **Authors**

The primary authors of this document are the staff members of the Utah Ecological Services Office.

Date: April 26, 2013

Rachel Jacobson

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